

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

KEVIN MILLER & PACITA MILLER

v.

UNITED STATES OF AMERICA

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Civil No. – JFM-15-2817

MEMORANDUM

Kevin Miller and Pacita Miller, the parents of MLM, have brought this action under the Federal Tort Claims Act (“FTCA”). MLM was enlisted in the United States Army Reserve while she was still in high school. MLM died as the result of suicide or murder by Staff Sergeant Adam Anthony Arndt, who had recruited her into the Army. The United States has filed a motion to dismiss. The motion will be granted.

I.

The facts may be briefly stated. MLM enlisted in the United States Army Reserve in October 2012. She was a minor, and her parents therefore consented to her enlistment. MLM was still in high school and therefore she was placed in the Army’s Delayed Training Program (“DTR”), which allowed her to defer her Army Basic Training until June 2013, after she graduated from high school.

MLM also participated in the Future Soldier Training Program at the Gaithersburg, Maryland recruiting center. As a member enlisted in the DTP, MLM was placed directly into a United States Army Reserve unit, the 48th Combat Support Hospital, Company B, Fort Meade, Maryland. She drilled with that unit in January, February, and March of 2013, and accrued thirty-two points toward military retirement. She was paid by the Army for the drilling. MLM’s

beneficiaries received \$400,000 in Servicemember's Group Life Insurance, a program subsidized by the United States.

Arndt held a recruiting event at MLM's high school and recruited her. At the time, he was a Future Student Leader at the recruiting center and MLM's direct supervisor. Arndt is alleged to have had inappropriate relationships with various high school students, including MLM. He is also alleged to have been admitted to a mental health facility prior to his enlistment in the Army, to have routinely had depressive and suicidal thoughts, to have been charged with a fourth degree sexual assault prior to his enlistment, and to having abused alcohol. He married one of his former recruits in 2012.

On April 7, 2015, Arndt contacted MLM threatening to commit suicide. MLM rushed to his house to try and help him. Allegedly, Arndt shot MLM and then turned the gun on himself.

II.

The United States has moved to dismiss on the basis of the *Feres* doctrine, which establishes that Congress did not intend to authorize suits by servicemembers that "arise out of or are in the course of activity incident to service." *Feres v. United States*, 340 U.S. 135, 146 (1950). As a member of the United States Army Reserve at the time of her death, MLM fell within the ambit of the *Feres* doctrine. See, e.g., *Luckett v. Bure*, 290 F.3d 493, 497 (2d Cir. 2002).

I find the Supreme Court decision in *United States v. Shearer*, 273 U.S. 52 (2002), to be dispositive. In that case a private in the Army had been kidnapped and killed by a fellow servicemember off a military base. Allegedly, the murderer had previously murdered a German woman three years before. In reversing the court of appeals, the Supreme Court concluded that the claims went "directly to the 'management' of the military" and "call[ed] into question basic

choices about the discipline, supervision, and control of a serviceman.” According to the Supreme Court, “[t]o permit this type of suit would mean that commanding officers would have to stand prepared to convince a civilian court of the wisdom of a wide range of military and disciplinary decisions; for example, whether to overlook a particular incident or episode, whether to discharge a serviceman, and whether and how to place restraints on a soldier’s off-base conduct.” *Id.*

A separate order granting the United States’ motion to dismiss is being entered herewith.

Date: March 28, 2016

/s/
J. Frederick Motz
United States District Judge

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